



Federal Communications Commission
Washington, D.C. 20554

August 8, 2012

Case Identifier: CGB-CC-1162

Fort Worth Bible Students
Attn: George Wilmott
P.O. Box 4085
Fort Worth, TX 76164

Re: *Divine Plan*

Dear Mr. Wilmott,

This is to advise you that the Consumer and Governmental Affairs Bureau (CGB) of the Federal Communications Commission ("FCC") has reviewed your petition for exemption from the closed captioning rules. CGB has found that your petition provides some, but not all, of the information needed for us to make a determination as to whether or not the FCC closed captioning requirements would be economically burdensome for you.

We note, as an initial matter, that an attachment to your petition suggests that Fort Worth Bible Students should be exempt from captioning based on several sub-sections of Section 79.1(d) of the FCC's Rules, 47 C.F.R. § 79.1(d). The attachment states that you have been advised that Fort Worth Bible Students should be exempt from the closed captioning rules based on 79.1(d)(12), which exempts "channels producing revenues of under \$3,000,000." Section 79.1(d)(12) states, "[n]o video programming provider shall be required to expend any money to caption any channel of video programming producing annual gross revenues of less than \$3,000,000 during the previous calendar year other than the obligation to pass through video programming already captioned when received pursuant to paragraph (c) of this section." Given that Fort Worth Bible Students is seeking an exemption for an individual video program, not a channel of video programming, the specific \$3,000,000 general revenue exemption of Section 79.1(d)(12) does not appear to apply to Fort Worth Bible Students's particular circumstances.

Additionally, the attachment suggests that Fort Worth Bible Students should be exempt from the closed captioning rules based on Section 79.1(d)(11), which provides that "[n]o video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2 percent of the gross revenues received from that channel during the previous calendar year." In this regard, we note that you have not provided evidence or information that Fort Worth Bible Students has expended 2 percent of its gross revenues on captioning during the previous calendar year. As a result, we are unable to assess whether this exemption is applicable to Fort Worth Bible Student's particular circumstance.

Lastly, the attachment contends that Section 79.1(d)(5) is applicable to Fort Worth Bible Students. Section 79.1(d)(5) of the FCC's Rules exempts from captioning programming that is being distributed to residential households between 2 a.m. and 6 a.m. local time. Under the FCC's Rules, a video programming distributor may, under some circumstances, specify a different four hour period

during which its programming is exempt from captioning as long as the four hours commence not earlier than 12 a.m. local time and ends not later than 7 a.m. local time. Because the *Divine Plan* airs at 5:30 a.m. local time, it may well qualify as exempt from captioning under this exemption. Based on the information before us, we are unable to assess whether the exemption applies. In this regard, we note that this is a self-implementing exemption which does not require prior FCC approval if the specified criterion is met. You may want to consult with the station airing your program to determine whether your program airs during a period that would be exempt from the captioning requirements pursuant to this rule.

With respect to the remainder of your petition, if you wish for this petition to receive further consideration for a closed captioning exemption, you must supplement your petition by providing us with the information described below, **by September 7, 2012**:

- Verification that you have sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts have not successfully produced assistance, you do not otherwise have the means to provide captioning for the program(s);
- Information on the impact that providing captions would have on your programming activities, for example, the extent to which your programming might not be shown if it is required to provide captions; and,
- An affidavit - *i.e.*, a written sworn statement made under oath before an official attesting to the truthfulness and accuracy of your petition – or be signed under penalty of perjury.

If you do not file this additional information **by September 7, 2012**, or the information that you provide is still not sufficient for us to make a determination, your petition will be dismissed without prejudice to re-filing **on November 6, 2012**, which is 90 days from the date of this letter, and you will be required to begin providing closed captions for your programming **on November 7, 2012**.

Here is additional information that may help you better understand how the FCC processes individual requests for captioning exemptions:

THE PETITION PROCESS – What a Petition Must Contain

The FCC's process for handling closed captioning exemption petitions has multiple steps. CGB is responsible for reviewing and deciding the merits of exemption petitions.

When CGB receives a petition, it must first determine whether a petition contains sufficient information to be placed on public notice (*i.e.*, released to the public) so that the public can comment on its merits. CGB looks to whether the petition contains up-to-date evidence, supported by affidavit, to show that it would be economically burdensome to provide closed captioning for the specific programming for which an exemption is sought. Section 713(e) of the Communications Act and the FCC's rules at 47 C.F.R. § 79.1(f)(2) define "economically burdensome" as "significant difficulty or expense." In determining whether the provision of closed captions will cause significant difficulty or expense, these provisions require the FCC to consider four factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.

In order to prove that the provision of closed captioning would impose an economic burden when applying the above four factors, a petition must contain the following:

1. Documentation of the petitioner's financial status sufficient to demonstrate the petitioner's inability to afford closed captioning – for example, profit and loss statements or bank statement information (This should not just include the resources devoted to or the costs associated with the television program at issue);
2. Information about the costs associated with captioning the specific program(s) for which the petitioner is requesting an exemption;
3. Verification that the petitioner has sought closed captioning assistance (*e.g.*, funding, services) from its video programming distributor including the extent to which such assistance has been provided or rejected;
4. Verification that the petitioner has sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts have not successfully produced assistance, the petitioner does not otherwise have the means to provide captioning for the program(s); and,
5. Information on the type of the petitioner's operation(s) and the impact that providing captions would have on its programming activities, for example, the extent to which its programming might not be shown if it is required to provide captions.

Each petition should contain a list of the program(s) for which an exemption is being sought and it may describe other factors that the petitioner deems relevant to an exemption determination, as well as any alternatives that could be a reasonable substitute for the closed captioning requirement. Finally, each petition **must be accompanied by an affidavit** – *i.e.*, a written sworn statement made under oath before an official attesting to the truthfulness and accuracy of the petition – or be signed under penalty of perjury.

We advise petitioners to carefully review the FCC's recently adopted *Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking in Anglers for Christ Ministries, Inc.*, which can be found at <http://transition.fcc.gov/cgb/dro/caption.html> and corresponding FCC rules (47 CFR § 79.1(f)(2)-(3)). These documents describe the requirements for obtaining an economically burdensome exemption in detail.

THE PETITION PROCESS – What Happens When a Petition is Sufficient or Deficient

If CGB determines that the petition provides *sufficient* information upon which to make a determination of whether or not to grant a closed captioning exemption, it will place the petition on public notice in CG Docket No. 06-181 at <http://fjallfoss.fcc.gov/ecfs/>. Members of the public will then have 30 days to file comments on and/or oppositions to the petition, after which the petitioner will have 20 days to respond. At the end of this timeframe, CGB will review the petition, along with information provided in any comments and responses received, to determine whether providing captioning would be economically burdensome for the petitioner. While a petition is pending, the program at issue does not need to be captioned.

If, however, CGB determines that the petition and supporting documents do not provide sufficient information needed for the FCC to make a determination as to the merits of its petition, the petition will be considered *deficient* and CGB will not place the petition on public notice.

YOUR PETITION

As noted above, CGB has determined that the petition that you filed with the FCC on November 15, 2011, provided some information, but it failed to provide sufficient information for us to make a determination as to whether the provision of closed captioning would be economically burdensome for you. In this connection, we note that your petition included documentation of your financial status, information about captioning costs, and verification that you have sought captioning assistance from the agency that makes arrangement for the program to air. We conclude that your petition is not sufficient to be placed on public notice. As mentioned above, if you wish to receive further consideration for a closed captioning exemption for your programming, you must supplement your petition by filing the information listed in the fifth paragraph of this letter **by September 7, 2012**, which is 30 days from the date of this letter. If you do not file this additional information by that date or the information that you provide is still deficient, your petition will be dismissed without prejudice to re-filing **on November 6, 2012**, and you will be required to begin providing closed captions for this programming **on November 7, 2012**.

If you decide to supplement your petition, your petition, as well as any supporting financial information provided, will be available for public inspection. If your petition contains confidential information, you may request “confidential treatment,” *i.e.*, that it not be shared with members of the public, pursuant to FCC rules. *See* 47 C.F.R. § 0.459. If you provide information for which you want “confidential treatment,” you must also submit a second version of your petition with the confidential information redacted (this must be submitted *along with* your request for confidential treatment). The redacted version will be publicly disclosed. If your request for confidential treatment is granted, the “public version” of your petition must still contain sufficient documentation to support your claim that closed captioning would be economically burdensome. This documentation is needed so that the public understands the basis for your exemption request and can comment on its merits.

If you have additional questions pertaining to the filing of an exemption request, please contact the FCC’s Disability Rights Office at captioningexemption@fcc.gov.

Roger Holberg
Attorney, Disability Rights Office
Consumer and Governmental Affairs Bureau

Instructions for Filing a Supplement to a Closed Captioning Exemption Petition

You must send the FCC an original and two (2) copies of the information supplementing your previously filed petition for a closed captioning exemption. Filings must be sent by hand or messenger delivery, commercial overnight courier, or by first class or overnight U.S. Postal Service mail.

For U.S. Postal Service mail, including Express Mail, Priority Mail, and First Class Mail, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-B431
445 12th Street, SW
Washington, DC 20554

For commercial overnight mail, such as Federal Express or United Parcel Service, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-B431
9300 East Hampton Drive
Capitol Heights, MD 20743

Electronic filing and faxes of petitions will not be accepted.

Please wait *at least two weeks* before contacting FCC staff to make inquiries about whether your petition has been received. **You must include the case identifier number at the top of the acknowledgement you previously received, which is also at the top of this letter, in all correspondence with the FCC regarding your petition.**